

ENTERED

August 06, 2019

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: Stephen and David Dernick, §
Debtors. §
§

DAVID H. RUSSELL FAMILY §
LTD. PARTNERSHIP, LLLP, §
Appellant. §

CIVIL ACTION NO. H-19-2235

MEMORANDUM AND ORDER

This case is before the Court on appeal from the June 5, 2019 award of attorneys' fees as "fee shifting . . . per Rule 37" entered by United States Bankruptcy Judge Eduardo Rodriguez.¹ Appellees Stephen and David Dernick filed a Motion to Dismiss Appeal [Doc. 3], noting that the appeal was from an interlocutory order and was filed without complying with the requirements of Bankruptcy Rule 8004(b). Appellant David H. Russell Family Ltd. Partnership, LLLP filed a Response [Doc. # 5], and Appellees filed a Reply [Doc. # 6].

The Bankruptcy Court's Order assessing attorneys' fees pursuant to Rule 37 of the Federal Rules of Civil Procedure is an interlocutory order. *See, e.g., In re Texas Bumper Exch., Inc.*, 333 B.R. 135, 138 (Bankr. W.D. Tex. 2005) ("The order from which defendant seeks relief in this motion addressed a nondispositive discovery

¹ In the June 5, 2019 ruling, Bankruptcy Judge Rodriguez ordered Appellees' counsel to file a fee application. It does not appear that a fee application has yet been filed, or that Appellant has been ordered to pay a specific amount.

issue. It did not dispose of the merits of the litigation. It is thus an interlocutory order.”). “To permit an immediate appeal from such a sanctions order would undermine the very purposes of Rule 37(a), which was designed to protect courts and opposing parties from delaying or harassing tactics during the discovery process.” *Cunningham v. Hamilton Cty., Ohio*, 527 U.S. 198, 208 (1999). Accordingly, it is hereby

ORDERED that the Motion to Dismiss Appeal [Doc. # 3] is **GRANTED** and the appeal is **DISMISSED WITHOUT PREJUDICE**.

SIGNED at Houston, Texas, this 6th day of **August, 2019**.



Nancy F. Atlas
NANCY F. ATLAS
SENIOR UNITED STATES DISTRICT JUDGE